

(2012) 04 GUJ CK 0018
In the Gujarat High Court

Case No : Appln. No. 4101 of 2011 in First Appeal 772 of 2010

Manhargiri Rajgiri Goswami and Another	APPELLANT
Vs	
District and Sessions Judge, Valsad and Others	RESPONDENT

Date of Decision : 30-04-2012

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : AIR 2012 Guj 137

Hon'ble Judges : Rajesh H Shukla, J

Bench : Single Bench

Advocate : Aspi M. Kapadia, for the Appellant; C.B. Upadhyaya and S. Sanjanwala Sr. Advocate, with Dilip L. Kanojiya, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh H. Shukla, J.—The present Civil Application has been filed by the applicants-original appellants u/s 5 of the Limitation Act for condonation of delay on the grounds stated in the application inter alia that the applicants were financially weak and could not make the financial arrangement to immediately challenge the order dated 04.10.2005 passed by the Presiding Officer, Fast Track Court, Valsad. It is also contended that the time was consumed for making financial arrangement. Further, it is also contended that the applicants' advocate, who was handling the case and guiding them, did not properly guide the applicants and did not inform about the availability of the remedy of Appeal u/s 72(4) of the Bombay Public Trusts Act, 1980. Affidavit-in-reply has been filed on behalf of the opponent No. 4-Trust specifically contending that the say of the applicant that they are economically weak cannot be believed as they have been fighting the litigations for seven years and after the impugned order was passed, they have filed further proceedings at Valsad and one petition is filed before the Tribunal. It is further contended in the affidavit that second reason that the advocate, who was handling, was not guided them properly is not correct because the affidavit of the said advocate has been filed. It is, therefore,

contended that bare perusal of the affidavit of the said advocate shows that they were having complete information regarding the right of Appeal.

2. Affidavit-in-rejoinder has been filed by the applicant reiterating the statements made in the memo of application and it has been stated that the affidavit of the advocate refers to the name of Shri Chaturvedi suggesting that Shri Chaturvedi had Power of Attorney of the applicants. It is also contended that this statements are false as the applicant had not given any Power of Attorney to Shri Chaturvedi. It is also contended that the delay has been occasioned on account of the genuine reason and not intentionally and, therefore, the present application may be allowed.

3. Heard learned Counsel, Mr. Apsi Kapadia for the applicants and learned Sr. counsel, Shri S. Sanjanwala appearing with learned Counsel, Mr. Dilip Kanojiya for the opponent No. 4-Trust.

4. Learned Counsel, Mr. Apsi Kapadia submitted that the respondent No. 4 is a Trust and out of total 11 Trustees, only one Trustee has filed affidavit and it does not refer to any such Resolution of the Trust authorizing him to file any affidavit. Learned Counsel, Mr. Kapadia submitted that Survey No. 98 of the land is belonging to the Trust, whereas Survey No. 99 and 133 are of private ownership claimed by the applicants and if the opportunity of contesting on merits are denied, it will cause great prejudice. Learned Counsel, Mr. Kapadia has also submitted that the approach of the Court should be liberal as laid down by the Hon''ble Apex Court in several judgments and he has submitted that the Court may allow this Appeal for doing justice between the parties on merits rather than any technicality. He therefore referred to the judgment of the Hon''ble Apex Court in case of Improvement Trust, Ludhiana Vs. Ujagar Singh and Others, in support of his submissions and submitted that it has been observed in this judgment that hyper technical approached is to be avoided and what should be matters to be considered. Learned Counsel, Mr. Kapadia submitted that unless mala fides are pointed out, normally rule is that delay should be condoned. He emphasized the observations and submitted that as observed, the matter should be allowed to be contested on merits rather than throwing it out on technicalities.

5. He has also referred to and relied upon the judgment of the Hon''ble Apex Court in case of N. Balakrishnan Vs. M. Krishnamurthy, more particularly Para No. 9, which reads as under:

9. It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the

superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion of the lower Court.

6. Learned Counsel, Mr. Kapadia has also referred to and relied upon the judgment in case of Ram Nath Sao alias Ram Nath Sahu & Ors. v. Gobardhan Sao & Ors., reported in AIR 2002 SC 1201 and referring to the observations in Para No. 13, it was emphasized that there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea for condonation of delay.

7. Learned Counsel, Mr. Kapadia has also referred to and relied upon the judgment of the Hon''ble Apex Court in case of State of Nagaland Vs. Lipok AO and Others, and pointedly referred to the observations made in Para No. 11 and Para No. 14. He emphasized that what constitutes sufficient cause cannot be laid down by hard and fast rules and it will have to be considered depending upon the entire facts. Therefore, it was submitted that the present application may be allowed.

8. Learned Counsel, Mr. Kapadia submitted that by granting such application, it is not going to cause any prejudice to the other side if the opportunity is given to the applicant to contest on merits. He submitted that even otherwise the applicant would suffer as it would be caused great prejudice to the applicants.

9. Learned Sr. Counsel, Mr. Sanjanwala appearing with learned Counsel, Mr. Kanojiya for the respondent No. 4-Trust has submitted that as could be seen from the records, there is no explanation and whatever explanation has been offered reflects negligence and casual attitude. Learned Sr. Counsel, Mr. Sanjanwala submitted that on one hand; it is stated that economic condition was the reasons, whereas the litigation is being fought for years and even after the impugned order, another litigations have also been initiated. Learned Sr. Counsel, Mr. Sanjanwala submitted that it is stated that their lawyer had not guided them properly, whereas the same lawyer has stated on affidavit that he has explained the applicant about their rights, therefore, when the same lawyer of the applicant has contradicted him, such explanation cannot be believed or accepted.

10. Learned Sr. Counsel, Mr. Sanjanwala, therefore, submitted that law of limitation is a substantive law and while exercising the jurisdiction, the Court has to consider whether any sufficient cause has been made out as required Under the Law. Learned Sr. Counsel, Mr. Sanjanwala submitted that when there is no plausible explanation for such sufficient cause, delay cannot be condoned and no discretion can be exercised. Learned Sr. Counsel, Mr. Sanjanwala has referred to the relied upon the judgment of the Hon''ble Apex Court in case of Balwant Singh (Dead) Vs. Jagdish Singh and Others, and referring to Head Note-B, Para No. 40,

he submitted that it has been observed that the strait-jacket formula which can uniformly be applied cannot be followed but it depends on the circumstances of a given case for such delay. He, therefore, submitted that whether sufficient cause has been made out or not is required to be considered. Mr. Sanjanwala submitted that word "sufficient cause" should be understood as observed in this judgment. For that, he emphasized the observations, which have been quoted that "The words "sufficient cause for not making the application within the period of limitation" should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words "sufficient cause" in Section 5 of Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant." Therefore, he submitted that sufficiency of satisfactory explanation is relevant criteria and liberal approach does not mean that it should cause injustice to other side. He submitted that delay may not be condoned when there is no sufficient cause made out. Learned Sr. Counsel, Mr. Sanjanwala has also referred to and relied upon the observations made in the judgment in case of Lanka Venkateswarlu (D) by L.Rs. Vs. State of A.P. and Others, and submitted that it has been specifically observed that while considering the delay, liberal approach is not justified in several case. He emphasized the observations that concepts such as "liberal approach", "justice-oriented approach", "substantial justice" cannot be employed to jettison substantial law of limitation. He, therefore, submitted that the present application may not be entertained.

11. In view of these rival submissions, it is required to be considered whether the present application can be entertained or not.

12. As it transpires, the delay is about 1552 days caused in filing above First Appeal and the explanation offered is (i) the economic condition; and (ii) the lawyer had not guided properly. In order to appreciate this explanation, when the applicant is contesting several litigations, it cannot be readily accepted that for want of sufficient means, Appeal could not be filed for all these long period when there are other litigations. Further, alternate explanation that the lawyer had not guided them properly is contradicted by the affidavit of same lawyer, who has stated that he had given proper guidance. Therefore, without any further discussion, it is evident that it is an explanation sought to be made out, which is contradicted. Even considering the well accepted guidelines laid down in a series of judgments by the Hon''ble Apex Court, which have been cited by both sides with regard to the approach, it is required to be stated that the broad guideline laid down by the Hon''ble Apex Court from all these judgments is that "sufficient cause" has to be made out while considering delay. It has also been observed that it is not the length of period but the justification or the explanation which is offered is relevant, which is required to be considered. In other words, if the "sufficient cause" is made out, the delay could be condoned. Therefore, what would constitute a sufficient cause has also been considered by the Hon''ble Apex

Court in various judgments including the judgment in case of Balwant Singh (Dead) Vs. Jagdish Singh and Others, . The observations has been made that no straight-jacket formula of uniformly applicable in all cases can be evolved. It is observed that the test to judge whether or not a cause is sufficient is to see whether it could have been avoided by the party by exercise of due care and attention. The Hon''ble Apex Court in a judgment in case of Perumon Bhagvathy Devaswom, Perinadu Village Vs. Bhargavi Amma (Dead) by LR.s. and Others, has also laid down broad guidelines, which are required to be kept in mind while dealing with such application. Therefore again, what is required to be considered is the justification or the sufficiency of the explanation. It is required to be mentioned that the Hon''ble Apex Court in a judgment Balwant Singh (supra) has observed as under:--

We may state that even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the concerned party. The purpose of introducing liberal construction normally is to introduce the concept of "reasonableness" as it is understood in its general connotation. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right, as accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.

13. The Hon''ble Apex Court in subsequent judgment in case of Lanka Venkateswarlu (D) by L.R.s. Vs. State of A.P. and Others, has also referred to this aspect and has clearly observed as under:

Whilst considering applications for condonation of delay under S. 5 of the Limitation Act, the Court do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in any systematic manner informed by reason. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers.

14. Therefore, the basic approach and the guidelines, which could be culled out from the aforesaid discussion is that unless the explanation is plausible, which would fit in the criteria of sufficient cause, the delay may not be condoned. In other words, the explanation, which is offered, must be plausible, reasonable and must fulfill the test of "sufficient cause". In the facts of the case, the explanation

cannot be said to have been made out any sufficient cause justifying the condonation of delay. The offered explanation need not be enough as the sufficient cause and the word sufficient cause, which has been considered by the Hon''ble Apex Court itself clearly states that it has to be a plausible explanation justifying the condonation of delay.

15. A useful reference can also be made to the judgment of the Hon''ble Apex Court in the case of Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation and Another, where the Hon''ble Apex Court has again considered and made observations with regard to the approach in such matters that for the purpose of condonation of delay for a smaller period it could be liberal, but for condonation of delay for a larger period it has to be strict for consideration of sufficient cause.

16. In the facts of the case, it does not fulfill any such test or criteria of "sufficient cause" and as there is no sufficient cause made out with the explanation or justification, the present application cannot be entertained and deserves to be dismissed. Accordingly, the present application stands dismissed. Rule is dismissed. In view of the above dismissal of the Civil Application for condonation of delay, the registration of First Appeal stands refused.